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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/555,301

02/01/2006

Michael Andrew Jones

4398-474

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EXAMINER

BLIZZARD, CHRISTOPHER JAMES

ART UNIT

PAPER NUMBER

3771

MAIL DATE

DELIVERY MODE

10/27/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/555,301	<b>Applicant(s)</b> JONES ET AL.	
	<b>Examiner</b> CHRISTOPHER BLIZZARD	<b>Art Unit</b> 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 54-57, 59, 61-63 and 65-67 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 54-57, 59, 61-63 and 65-67 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 November 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This office action is in response to amendment filed 6/30/09. As directed claims 54, 59, 61, 65 and 66 were amended, claim 67 was added and claims were cancelled. Therefore this application currently has claims 54-57, 59, 61-63, and 65-67 pending.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 54-57, 61, and 65-67 are rejected under 35 U.S.C. 102(b) as being anticipated by McCall (5,921,239).

4. Regarding claims 54-57 and 61, McCall et al. discloses a mask system (10) comprising a shell (14) made of a flexible material (column 5, lines 15-16) and forming a flexible decoupling structure (column 5, lines 44-51), a frame (20) to support the shell, a cushion (12) provided to the shell to form a seal with the patient (column 3, lines 37-39), and an approximately 90 degrees elbow conduit portion (16) (fig. 1) having a first end provided to the shell (42) and being associated with the decoupling structure (fig. 8) and a second swivel end (43) adapted to engage an air delivery conduit (18), whereby any movement of the air delivery conduit creating drag forces applied to the conduit portion can be decoupled from the cushion so as to avoid disruption of the seal (column 3, lines 37-39).

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5. Regarding claims 64-66, McCall discloses the frame (20) made of a relatively hard material (column 4, lines 5-11) compared to the shell, and includes a headgear (21) connection point (65).

6. Regarding claim 67, McCall discloses the shell including a flange that forms a channel which the frame is received (fig. 3, around numbers 25 and 34).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 59 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCall (5,921,239) as applied to claim 54 above, and further in view of Sullivan (6,039,044).

9. Regarding claim 59, McCall discloses the claimed mask system except for the decoupling structure including a bellows portion. Sullivan teaches a flexible decoupling (20) structure for a mask system including a bellows portion (column 2, lines 43-49). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the mask system of McCall with a bellows structure as taught by Sullivan in order to provide the advantage a large range of conduit motion without breaking the mask seal.

10. Regarding claim 62, McCall discloses the claimed mask system except for a plurality of vent orifices provide to the conduit. Sullivan teaches a mask system

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including an elbow conduit portion (24) (fig. 2) having two vent orifices (25). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the mask system of McCall with vent orifices as taught by Sullivan in order to provide the advantage no over pressurizing the mask.

11. Claim 63 is rejected under 35 U.S.C. 103(a) as being unpatentable over McCall (5,921,239) as applied to claim 54 above, and further in view of Scarberry (6,397,847)

12. Regarding claim 63, McCall discloses the claimed mask system except for reinforcing ribs. Scarberry teaches a mask system (10) with reinforcing ribs (42) provided to a shell (27) in a region surrounding an aperture (30) of the shell (27) where the conduit portion (12) is provided (fig. 3). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the mask system of McCall with reinforcing ribs as taught by Scarberry in order to provide the advantage of providing uniform compression of the cushion when in contact with the patient's face, as taught by Scarberry (column 9, lines 46-49).

### ***Response to Arguments***

13. Applicant's arguments filed 6/30/09 have been fully considered but they are not all persuasive. Applicant's arguments concerning drawing objections and rejection under 35 U.S.C 112 are persuasive and have been withdrawn. Applicant's argument concerning McCall not teaching a flexible shell forming a flexible decoupling structure is not persuasive as McCall describes the flexibility of the shell in great detail (column 5, lines 15-67; column 6, lines 1-10) as well as shows the decoupling action in figure 8.

### ***Conclusion***

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14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER BLIZZARD whose telephone number is (571)270-7138. The examiner can normally be reached on Monday thru Friday, 9:00AM -5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571)2724835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/CHRISTOPHER BLIZZARD/  
Examiner, Art Unit 3771

/Justine R Yu/  
Supervisory Patent Examiner, Art Unit 3771